

- I. Claims 1-86 and 90-91, drawn to a hair cosmetic composition comprising in a cosmetically acceptable medium at least one gradient copolymer comprising at least two monomeric residues, classified in class 424, subclass 70.11-70.17, depending on the copolymer.
- II. Claims 87-89, drawn to a device comprising an aerosol composition comprising at least one propellant and at least one hair cosmetic composition comprising in a cosmetically acceptable medium at least one gradient copolymer comprising at least two monomeric residues, classified in class 424, subclass 45 and 47.
- III. Claim 92, drawn to a method of treating hair comprising applying to the hair a hair cosmetic composition comprising in a cosmetically acceptable medium at least one gradient copolymer comprising at least two monomeric residues, classified in class 424, subclass 70.11-70.17 depending on the copolymer.
- IV. Claim 93, drawn to a method of treating hair comprising spraying on the hair an aerosol composition comprising at least one propellant and at least one hair cosmetic composition comprising in a cosmetically acceptable medium at least one gradient copolymer comprising at least two monomeric residues, classified in class 424, subclass 45 and 47.

Office Action at 2.

Applicant respectfully traverses the restriction requirement, as set forth above and on page 2 of the Office Action. However, to be fully responsive, Applicant elects, with traverse, the subject matter of Group I, comprising claims 1-86 and 90-91.

Applicant respectfully refers the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to follow in making proper requirements for restriction. The M.P.E.P. instructs the Examiner as follows:

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

M.P.E.P. § 803 (emphasis added).

Here, the Examiner has not shown that examining at least Groups I and II together would constitute a serious burden. Rather, the Examiner admits that Groups II and I are related as apparatus and product made. *See* Office Action at 3. The Examiner contends that the above related groups can also be distinct, but does not specify what serious burden will be placed on the Examiner if she were to proceed in examining the groups together, as required by M.P.E.P. § 803.

Further, Applicant respectfully submits that, at a minimum, examining the claims of Groups I and III together would not impose a serious burden. M.P.E.P. § 803 states that “a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification.” In contrast, the Examiner indicates that Groups I and III fall into the same “class 424, subclass 70.11-70.17.” Office Action at 2.

Additionally, Applicant submits no serious burden would exist in light of the requirement of rejoinder. *See* M.P.E.P. § 821.04. In view of all of the above, Applicant respectfully requests withdrawal of the restriction requirement.

## **II. Election of Species Requirement**

The Examiner requires election of a single species belonging to the film-forming gradient copolymer. *See* Office Action at 4. According to the Examiner, the copolymer “is formed from two different monomeric residues and the monomeric residues are claimed in claims 40-79. . . . All the film-forming gradient copolymer [sic] formed from all these different monomeric residues is [sic] distinct and separate.” *Id.* Applicant respectfully traverses this election requirement as set forth on page 4 of the Office

Action. However, to be fully responsive, Applicant elects, with traverse, the species alkyl acrylate + styrene + (meth)acrylic acid (e.g., the polymer of Example 1). The Examiner asks for “a listing of all claims readable” on the election of species. *See id.* at 5. At least claims 40, 46-47, 63, 66, 72, 75, and 77-78 are readable thereon. Claims 1-26, 80-86, and 90-91 are generic.

Applicant respectfully traverses the election of species requirement, at least because the Examiner, similar to the Restriction Requirement, has failed to show that a serious burden exists to examine all of the alleged species. To make a proper requirement for an election of species the Examiner must, *inter alia*, show that the search and examination of a claim would impose a serious burden on the Office because it embraces an unreasonable number of species. *See* M.P.E.P. § 803.02. Here, the Examiner has provided no reasons or evidence on the record to substantiate the election of species requirement, let alone how examination of all the species would impose a serious burden.

If the Examiner chooses to maintain the election of species requirement, Applicant expects the Examiner, if the elected species is found allowable, to continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, *i.e.*, extending the search to a “reasonable” number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121. Accordingly, it is unclear what burden is on the Examiner to examine all claimed species together, and Applicant respectfully requests withdrawal of the election of species requirement.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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